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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 (OAKLAND DIVISION)
5

6 MCKESSON CORPORATION, a Delaware
7 corporation,

8 Plaintiff,

9 v.

10 FAMILYMEDS GROUP, INC., f/k/a
11 DRUGMAX, INC., a Nevada corporation,

12 Defendant.

13 FAMILYMEDS GROUP, INC., f/k/a
14 DRUGMAX, INC., a Nevada corporation,

15 Counterclaimant,

16 v.

17 MCKESSON CORPORATION, a Delaware
18 corporation,

19 Counterdefendant.

CASE NO. CV07-5715 WDB

Related to Case No. 4:08-cv-02850-WDB

**STIPULATION TO STAY OF
PROCEEDINGS; ORDER THEREON**

Complaint filed:	Nov. 9, 2007
Counterclaim filed:	Dec. 17, 2007
Cross-Complaint Filed:	Dec. 17, 2007
Trial date:	none set

20 This Stipulation to Stay of Proceedings; Order Thereon (this "**Stipulation**") is
21 entered into by and between Familymeds, Inc., a Connecticut corporation and Familymeds Group,
22 Inc. a Nevada corporation, f/k/a Drugmax, Inc., a Nevada corporation (collectively, "**Familymeds**")
23 on the one hand, and McKesson Corporation, a Delaware corporation ("**McKesson**") and D&K
24 Healthcare Resources LLC, a Delaware limited liability company, f/k/a D&K Healthcare
25 Resources, Inc., a Delaware corporation (collectively, "**Defendants**") on the other (collectively, the
26 "**Parties**," and individually, each a "**Party**"). The Parties each hereby stipulate and agree as
27 follows:

RECITALS

28 1. On November 9, 2007, McKesson filed its Complaint for Breach of Contract in the
above-referenced action (this "**First Action**").

1 2. On December 17, 2007, Familymeds filed in the First Action their Counterclaim for
2 Specific Performance of Contract and Accounting; Cross-Complaint for Accounting (the
3 "**Counterclaim**").

4 3. On June 6, 2008, Familymeds filed its Complaint for Specific Performance of
5 Contract and Accounting in the above-referenced Court which was assigned Case Number 4:08-cv-
6 02850-WDB (the "**Second Action**").

7 4. On June 18, 2008, the Court entered its Order deeming this Second Action related to
8 the First Action.

9 5. On August 20, 2008, McKesson filed in the Second Action its Motion to Dismiss
10 Complaint Pursuant to FRCP Rules 12(b)(1) and 12(b)(6), and setting the hearing thereon for
11 October 29, 2008 (the "**Motion to Dismiss**").

12 6. On September 9, 2008, the Court entered in the First Action partial judgment in
13 favor of McKesson Corporation and against Familymeds Group, Inc. in the amount of \$747,474.09.

14 7. Pursuant to stipulation of the Parties, on October 7, 2008, the Court ordered the
15 hearing on the Motion to Dismiss be continued until November 12, 2008, ordered that a Case
16 Management Conference be set for the same day in both actions (the "**Case Management**
17 **Conferences**"), and ordered that Familymeds shall file any motion for leave to amend its
18 Counterclaim in the First Action or its Complaint in the Second Action on or before October 22,
19 2008.

20 8. On October 16, 2008, the Parties participated in a private mediation, wherein, the
21 Parties reached a settlement of their respective claims and executed an Agreement and General
22 Release (the "**Agreement**").

23 9. The performances arising under the Agreement are to be completed on or before
24 January 23, 2009, and the effectiveness of the releases set forth therein accrue on January 23, 2009
25 upon such performance.

26 10. The Parties believe it to be in their best interest to enter into this Stipulation and
27 hereby stipulate and agree as follows:
28

STIPULATION

11. Recitals 1 through 10 are incorporated herein by this reference and the Parties agree that the information recited above is true and correct.

12. The November 12, 2008 hearing on the Motion to Dismiss shall be taken off calendar subject to rescheduling if the performances under the Agreement are not completed.

13. The November 12, 2008 Case Management Conferences shall be taken off calendar subject to rescheduling if the performances under the Agreement are not completed.

14. All proceedings in the First Action and Second Action shall be stayed until January 23, 2009, unless otherwise stipulated by the Parties or ordered by the Court, including after application by one or more of the Parties.

DATED: October 22, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROBERT C. GEBHARDT
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By: 

MATTHEW S. KENEFICK

Attorneys for FAMILYMEDS, INC., a Connecticut corporation and FAMILYMEDS GROUP, INC. a Nevada corporation, f/k/a DRUGMAX, INC., a Nevada corporation

DATED: October 22, 2008

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By: 

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 10/27/2008


THE HONORABLE WAYNE D. BRAZIL